

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 American Pacific International Capital, Inc.) MUR 7122
6 Huaidan Chen a/k/a Serena Tang¹)
7 Gordon Tang)
8 Wilson Chen)
9 Right to Rise USA and Charlie Spies)
10 in his official capacity as treasurer)

11
12 **SECOND GENERAL COUNSEL'S REPORT**

13
14 **I. ACTIONS RECOMMENDED**

15 Find reason to believe that Right to Rise USA and Charlie Spies in his official capacity as
16 treasurer ("Right to Rise USA") violated 52 U.S.C. §30121(a)(2); authorize the Office of
17 General Counsel to enter into pre-probable cause conciliation with American Pacific
18 International Capital, Inc. ("APIC"), Huaidan Chen, Gordon Tang ("Tang"), and Wilson Chen
19 (collectively the "APIC Respondents"); authorize the Office of General Counsel to enter into
20 pre-probable cause conciliation with Right to Rise USA; approve the attached Factual and Legal
21 Analysis; and approve the attached proposed conciliation agreements with the APIC
22 Respondents and Right to Rise USA.

23 **II. BACKGROUND**

24 The Commission previously found reason to believe that the APIC Respondents violated
25 the prohibition on foreign national contributions at 52 U.S.C. § 30121(a)(1)(A) when APIC
26 contributed \$1.3 million to Right to Rise USA, an independent expenditure-only political
27 committee that supported Jeb Bush's 2016 presidential campaign.² The Commission found

¹ The available information indicates that Huaidan Chen also goes by the name Serena Tang; some of the documents discussed and quoted in this report refer to her by that name, but we otherwise refer to her as Huaidan Chen, the name used in the Complaint and Responses.

² MUR 7122 Certification (Mar. 30, 2017); Factual and Legal Analysis at 1-2, MUR 7122 ("F&LA").

1 reason to believe that Tang and Huaidan Chen, Chinese foreign nationals who own the parent
2 company of APIC and are APIC board members, participated in the decision to make the
3 contributions to Right to Rise USA, and that Wilson Chen, a United States citizen who is APIC's
4 founder and Executive Director, knowingly provided substantial assistance in making a
5 prohibited foreign contribution.³ The Commission took no action at that time as to whether
6 Right to Rise USA violated 52 U.S.C. § 30121(a)(2) by soliciting, accepting, or receiving a
7 foreign national contribution.

8 The Commission commenced an investigation to determine whether the foreign nationals
9 on APIC's board participated in APIC's decision to contribute to Right to Rise USA, and to
10 probe the scope of Wilson Chen's authority over political contributions.

11 **III. SUMMARY OF INVESTIGATION**

12 After the Commission found reason to believe, the APIC Respondents submitted a
13 Supplemental Response that requested that the Commission enter into pre-probable cause
14 conciliation.⁴ The Supplemental Response also provided cursory sworn statements from Gordon
15 Tang, Huaidan Chen, and Wilson Chen, which assert that Wilson Chen was the "sole decision-
16 maker" with respect to the political contributions and that the foreign national board members

³ F&LA at 4-6, MUR 7122.

⁴ Supp. Resp. of APIC, Huaidan Chen, Wilson Chen, and Gordon Tang ("APIC Supp. Resp.") (May 16, 2017). Right to Rise USA submitted a response to the initial Complaint asserting only that it was improper for the Commission to proceed against it as a Respondent. *See* FGCR at 4.

1 did not participate in the decision to make those contributions.⁵ The statements, however, do not
2 otherwise elaborate on the circumstances surrounding APIC's contributions.⁶

3 In order to obtain additional information about the contributions, the investigation
4 included requests for documents and interviews with Wilson Chen, Neil Bush, and Gordon
5 Tang.⁷ Contrary to the sworn statements submitted with the Supplemental Response, the
6 investigation shows that Chinese nationals Gordon Tang and Huaidan Chen were involved in
7 making APIC's contribution to Right to Rise USA. Interviews with Wilson Chen, Neil Bush,
8 and Gordon Tang establish that Neil Bush, the brother of Jeb Bush and a member of APIC's
9 board of directors, first contacted Wilson Chen by telephone in early 2015 to ask whether APIC
10 would contribute to Right to Rise USA.⁸ According to Neil Bush, Wilson Chen responded that
11 he had some interest.⁹ During the weekend of February 6, 2015, Neil Bush and Gordon Tang
12 both attended the board of directors meeting for SingHaiyi, a company in which Gordon Tang
13 and Huiadan Chen also own a majority interest.¹⁰ According to Gordon Tang, sometime during
14 that weekend Neil Bush and Gordon Tang had a private meeting during which they discussed the
15 possibility of APIC contributing to Right to Rise USA and Neil Bush told Gordon Tang that he

⁵ Compare *id.*, Attachs. A-C, with Resp. of APIC, Huaidan Chen, Wilson Chen, and Gordon Tang (Sept. 1, 2016).

⁶ See APIC Supp. Resp., Attachs. A-C; see also *id.*, Attach. D (supplying new translation of information discussed in F&LA, but without otherwise elaborating on circumstances surrounding APIC's contributions).

⁷ Gordon Tang's interview was conducted through an interpreter because he does not speak English proficiently.

⁸ See Report of Investigation of Wilson Chen (Sept. 11, 2017) ("Wilson Chen ROI"); Report of Investigation of Neil Bush (Sept. 20, 2017) ("Bush ROI").

⁹ See Bush ROI.

¹⁰ See *id.*; Report of Investigation of Gordon Tang (Oct. 24, 2017) ("Tang ROI"). While SingHaiyi does business with APIC, the two companies are separate entities. See Bush ROI. Neil Bush also serves as the Chairman of SingHaiyi's board of directors. See *id.*

1 was going to solicit Wilson Chen for a contribution from APIC.¹¹ Gordon Tang stated in his
2 interview that he told Neil Bush that APIC might be interested in contributing if it could do so
3 legally.¹²

4 On February 21, 2015, Neil Bush sent an email to Huaidan Chen (by her preferred name
5 Serena Tang) and Wilson Chen,¹³ which states:

6 Serena and Winston,

7 When I was with Gordon [Tang] he expressed interest in donating
8 legally through APIC to my brother Jeb's political action
9 committee (PAC). I've asked the council [sic] for the PAC to send
10 info for qualifications. Please check to see if APIC qualifies as a
11 prospective donor. If Gordon wants to make a donation you ought
12 to pass this by your legal counsel as well to be sure everything is
13 done properly.

14
15 Thanks for your interest in helping my brother and thanks for
16 wanting to do it according to the strict rules and regulations in the
17 USA regarding these matters.¹⁴
18

19 The email included a memorandum that outlined the contribution rules for domestic subsidiaries
20 of foreign corporations, and that memorandum explained that foreign nationals cannot participate
21 in a domestic subsidiary's decision to make a political contribution.¹⁵

¹¹ See Tang ROI. Neil Bush said that he did not recall having this conversation with Gordon Tang, but when he was asked about it specifically, he stated that it probably happened, he just couldn't remember it. See Bush ROI.

¹² See Tang ROI.

¹³ Neil Bush's initial email was actually sent to Huaidan Chen and Winston Chen; Winston Chen is a Vice President at APIC and United States citizen. The Respondents have explained that the email was intended for Wilson Chen and that Neil Bush sent the email to Winston Chen in error. See Letter from Peter Spivack to Christopher Edwards, FEC (July 13, 2017), n.1 (attaching and explaining Document Production of APIC, Huaidan Chen, Wilson Chen, and Gordon Tang ("APIC Doc. Prod.")). Huaidan Chen forwarded Neil Bush's email to Wilson Chen, as explained further below.

¹⁴ APIC Doc. Prod. at APIC00000001 (July 13, 2017), Attachment 1 to this report.

¹⁵ See *id.* at APIC00000001-05. The memorandum, from Charlie Spies to Right to Rise Super PAC, cited several advisory opinions, including a cite to Advisory Opinion 2000-17 (Extendicare Health Services) for the proposition that a domestic subsidiary of a foreign corporation can create a PAC and donate money only if the decision making process was made by U.S. citizens. See *id.* at APIC00000005.

1 Huaidan Chen forwarded this message on the same day by an email to Wilson Chen that
2 said, "Hi Wilson, Gordon wants you to follow up this matter. Pls check with Ashlee and contact
3 him by phone. Thanks. Serena."¹⁶ Neil Bush was copied on this email. Gordon Tang explained
4 during his interview that, after thinking on the issue, he had instructed Huaidan Chen to send the
5 email that instructed Wilson Chen to follow up on the matter.¹⁷ Wilson Chen responded with an
6 email that stated "Will do. Thank you! Wilson."¹⁸ Neil Bush also was copied on Wilson Chen's
7 reply email.

8 Wilson Chen later emailed Neil Bush and Charles Spies ("Spies"), Right to Rise USA's
9 legal counsel, and advised that he had read the aforementioned memorandum, consulted a
10 "legal/political advisor," and concluded that APIC was qualified to contribute as a United States
11 company.¹⁹ It appears that Spies later inquired as to Wilson Chen's nationality, and Wilson
12 Chen stated that he was a United States citizen.²⁰

13 IV. LEGAL ANALYSIS

14 A. APIC Respondents

15 The Act and Commission regulations prohibit a foreign national from making a
16 contribution, directly or indirectly, in connection with a federal, state, or local election.²¹ A
17 "foreign national" is an individual who is not a citizen of the United States or a national of the

¹⁶ See *id.* at APIC00000001. Ashlee Sorber is APIC's in-house counsel. See Wilson Chen ROI.

¹⁷ See Tang ROI.

¹⁸ APIC Doc. Prod. at APIC00000001.

¹⁹ *Id.* at APIC00000006.

²⁰ *Id.* at APIC000000017.

²¹ 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b), (c).

1 United States and who is not lawfully admitted for permanent residence.²² Commission
2 regulations provide that a "foreign national shall not direct, dictate, control, or directly or
3 indirectly participate in the decision-making process of any . . . corporation . . . with regard to . . .
4 election-related activities."²³ This prohibition includes "decisions concerning the making of
5 contributions, donations, expenditures, or disbursements."²⁴ It is also unlawful for a person to
6 provide substantial assistance "in the solicitation, making, acceptance, or receipt" of an unlawful
7 foreign contribution.²⁵ Generally, a domestic subsidiary or affiliate of a foreign national
8 corporation is permitted to make contributions (when corporate contributions are otherwise
9 permitted) if the funds are generated solely by their domestic operations²⁶ *and* if no foreign
10 nationals are involved in the decision to make the contribution.²⁷

²² 52 U.S.C. § 30121(b)(2). The term "foreign national" also includes "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

²³ 11 C.F.R. § 110.20(i).

²⁴ *Id.*

²⁵ 11 C.F.R. § 110.20(h).

²⁶ See Advisory Op. 2006-15 (TransCanada); Advisory Op. 1992-16 (Nansay); Advisory Op. 1989-20 (Kuilima).

²⁷ See 11 C.F.R. § 110.20(i); Advisory Op. 2006-15; *see, e.g.*, Factual & Legal Analysis at 3-4, MUR 6093 (Transurban Grp.). The Commission has specifically determined that "no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions." Advisory Op. 1989-20 at 2; *see, e.g.*, F&LA at 4, MUR 6093 (the Act was violated where foreign company's board of directors directly participated in determining whether to continue the political contributions policy of its U.S. subsidiaries); Factual & Legal Analysis at 6-7, MUR 6184 (Skyway Concession Company, LLC) (the Act was violated where a foreign national CEO participated in the subsidiary's election-related activities by vetting the campaign solicitations forwarded to him by the company's relations consultant or deciding which nonfederal committees would receive contributions from the company).

1 The record in this matter shows that Gordon Tang, a foreign national owner²⁸ and board
2 member of APIC, participated in the decision that APIC would contribute to Right to Rise USA,
3 as documented in the series of emails from February 21, 2015 in which Neil Bush stated "When I
4 was with Gordon he expressed interest in donating . . .," and Huaidan Chen then forwarded Neil
5 Bush's email to Wilson Chen and stated that " . . . Gordon wants you to follow up this matter."
6 Gordon Tang confirmed during his interview that he directed Huaidan Chen to send the email to
7 Wilson Chen asking Wilson to "follow up" on the matter. Contrary to the assertions of Gordon
8 Tang and Huaidan Chen,²⁹ these emails establish that Gordon Tang, the Chairman of APIC's
9 board, through and with his co-majority shareholder and wife Huaidan Chen, violated the
10 prohibition on foreign nationals directly or indirectly making contributions³⁰ as implemented in
11 the rule that "no director or officer of the company or its parent who is a foreign national may
12 participate in any way in the decision-making process with regard to making . . . proposed
13 contributions."³¹ These emails, along with other emails showing Wilson Chen's subsequent
14 correspondence in arranging the wire of funds, also establishes that Wilson Chen, a United States
15 citizen, knowingly provided substantial assistance in making a prohibited foreign national
16 contribution.³²

²⁸ APIC is a subsidiary of "Tang's company" JAG Pacific, LTD, a foreign corporation. *See* Tang ROI. Gordon Tang and Huaidan Chen, who are married, describe themselves in their declarations as the only two majority shareholders of APIC. *See* APIC Supp. Resp., Attachs. A-B; Tang ROI.

²⁹ *See* APIC Supp. Resp., Attachs. A-B.

³⁰ *See* 52 U.S.C. § 30121(a)(1).

³¹ Advisory Op. 1989-20 at 2; *see, e.g.*, F&LA at 4, MUR 6093; F&LA at 6-7, MUR 6184.

³² *See* APIC Doc. Prod. at APIC00000010-15.

B. Right to Rise USA

The Act further prohibits persons from knowingly soliciting, accepting, or receiving a contribution or donation from a foreign national.³³ A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry.³⁴

The record shows that Neil Bush, acting as an agent of Right to Rise USA,³⁵ had a conversation with Gordon Tang, a foreign national, about the possibility of APIC contributing to Rise to Rise USA.³⁶ After this conversation, Neil Bush sent an email to Huaidan Chen and Wilson Chen stating, “[w]hen I was with Gordon he expressed interest in donating.”³⁷ Neil Bush advised both Huaidan and Wilson Chen in the same email that, “[i]f Gordon wants to make a donation you ought to pass this by your legal counsel as well to be sure everything is done

³³ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

³⁴ 11 C.F.R. § 110.20(a)(4).

³⁵ An agent is typically defined in this context as any person who has actual authority, either express or implied, to solicit, direct, or receive any contribution. *See* 11 C.F.R. § 300.2(b); *see also* Contribution Limitations and Prohibitions, 67 Fed. Reg. 69928, 69942 (Nov. 19, 2002) (explaining that inclusion of 11 C.F.R. § 300.2(m) definition of “solicit” in foreign national provisions at 11 C.F.R. § 110.20(a)(6) was intended to apply to all persons who may solicit campaign funds from foreign nationals, including candidates; parties, and their agents). Charlie Spies, legal counsel and treasurer for Right to Rise USA, provided Neil Bush with the aforementioned memorandum outlining the contribution rules for a domestic subsidiary of a foreign corporation; Spies also told Neil Bush to let him know what additional information would be helpful. APIC Doc. Prod. at APIC00000002. In light of these facts, it appears that Neil Bush was acting as an agent of Right to Rise USA when soliciting the contributions.

³⁶ *See* Tang ROI.

³⁷ APIC Doc. Prod. at APIC00000001-02.

1 properly.”³⁸ Because Neil Bush had the wrong name and email address for Wilson Chen,
2 Huaidan Chen forwarded Neil Bush’s email to Wilson Chen, and instructed him that “Gordon
3 wants you to follow up this matter.”³⁹ Wilson Chen responded with an email in which he agreed
4 to follow up, copying Neil Bush.⁴⁰ Neil Bush thus received a copy of both the Huaidan Chen
5 email conveying Gordon Tang’s instruction, and Wilson Chen’s email stating that he would
6 follow up on that instruction.

7 The totality of these interactions show that Neil Bush knew that Gordon Tang and
8 Huaidan Chen had participated in APIC’s decision to contribute to Right to Rise USA. Neil
9 Bush discussed the possibility of an APIC contribution in an in-person meeting in Singapore
10 with Gordon Tang, with whom he had overlapping business relationships by which a reasonable
11 inference can be made of Bush’s actual knowledge of Tang’s foreign national status. Neil Bush
12 then, by email to Huaidan Chen, with whom he also had overlapping business relationships by
13 which a reasonable inference can be made of Bush’s actual knowledge of Huaidan Chen’s
14 foreign national status, continued to proactively engage foreign national participation in APIC’s
15 contribution. Neil Bush sent Huaidan Chen a legal memorandum stating that, even for a “Super
16 PAC,” a “domestic subsidiary corporation must still comply with the restrictions on foreign
17 national funds and participation”⁴¹ while simultaneously referencing the prior conversation
18 with Gordon Tang and asking Huaidan Chen (and the person he believed to be Wilson Chen) to
19 seek Gordon Tang’s continued participation in the decisions concerning APIC’s contribution.

³⁸ *Id.* (emphasis added).

³⁹ *Id.*

⁴⁰ *Id.* (Wilson Chen responding to Huaidan Chen with the phrase “[w]ill do.”)

⁴¹ APIC Doc. Prod. at APIC00000005 (emphasis in original).

1 Thus, when Right to Rise USA accepted APIC's contributions, it knew it was accepting and
2 receiving contributions that had been directed by a foreign national.

3 Though Neil Bush indicated that Wilson Chen should consult with counsel and sent
4 guidelines for making legal contributions, and Gordon Tang asserts that he was only interested in
5 APIC contributing if it could be done legally, this does not negate the knowledge that Right to
6 Rise USA had about Gordon Tang's and Huaidan Chen's participation in the making of APIC's
7 contributions. Nor is it credible that Wilson Chen, as a subordinate to Gordon Tang, made the
8 decision that APIC contribute independent of Gordon Tang's instruction to follow up on Neil
9 Bush's solicitation. Even though Wilson Chen informed Right to Rise USA's counsel that he
10 had read the memo setting forth the legal guidelines, consulted a legal advisor, and concluded
11 that APIC could make a contribution to APIC, that conclusion was erroneous given the known
12 involvement of Gordon Tang and Huaidan Chen.⁴² Moreover, though Right to Rise USA's
13 counsel inquired into Wilson Chen's nationality – indicating that Right to Rise USA was aware
14 of facts that would lead a reasonable person to inquire whether the funds solicited, accepted, or
15 received from APIC were from a foreign national – the inquiry itself was not reasonable. Right
16 to Rise USA appears to have sought nationality information from only Wilson Chen, one
17 individual, despite the contributor being APIC, a domestic subsidiary of a foreign corporation for
18 which foreign national participation in decision-making was known, per Right to Rise USA's
19 own memorandum, to be the relevant inquiry.

20 Accordingly, we recommend that the Commission find reason to believe that Right to
21 Rise USA violated 52 U.S.C. § 30121(a)(2).

⁴²

Id. at APIC00000006.

V. PROPOSED CONCILIATION

We recommend the Commission enter into pre-probable cause conciliation with the APIC Respondents and Right to Rise USA to resolve their violations of the Act, and have attached two separate conciliation agreements for approval.

VI. RECOMMENDATIONS

1. Find reason to believe that Right to Rise USA and Charles R. Spies in his official capacity as treasurer violated 52 U.S.C. § 30121(a)(2);
2. Enter into pre-probable cause conciliation with American Pacific International Capital, Inc., Huaidan Chen, Gordan Tang, and Wilson Chen prior to a finding of probable cause to believe;
3. Enter into pre-probable cause conciliation with Right to Rise USA and Charles R. Spies in his official capacity as treasurer prior to a finding of probable cause to believe;
4. Approve the attached Factual and Legal Analysis;

⁴³ See MUR-6129 (ARDA-ROC PAC).

⁴⁴ See Right to Rise USA 2016 June Monthly Report at 682 (June 20, 2016).

5. Approve the attached proposed conciliation agreements; and

6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

7/03/2018
Date

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel for Enforcement

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Christopher Edwards
Christopher L. Edwards
Attorney

Attachments:

2. Factual & Legal Analysis (Right to Rise USA)

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Right to Rise USA and Charlie Spies
in his official capacity as treasurer

MUR 7122

I. INTRODUCTION

The Complaint alleges that Right to Rise USA and Charlie Spies in his official capacity as treasurer ("Right to Rise USA") knowingly solicited and accepted foreign national contributions from American Pacific International Capital, Inc., ("APIC") a United States subsidiary of a foreign corporation, Jag Pacific, Ltd., in violation of Section 30121 of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint bases its allegation on an assertion that foreign nationals Gordon Tang ("Tang") and Huaidan Chen, majority owners of Jag Pacific, Ltd., participated in APIC's decision to contribute, and Neil Bush, an agent of Right to Rise USA, was aware of this participation.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Right to Rise USA is an independent expenditure-only committee that supported Jeb Bush's 2016 presidential campaign.¹ APIC is a privately held California corporation owned by Jag Pacific, Ltd., a foreign corporation. APIC describes itself as a "diversified international investment holding company with businesses throughout the US and China."² Tang and Huaidan Chen are Chinese nationals who own a majority interest in Jag Pacific, Ltd. According to APIC's website, Tang is the Chairman/President of APIC's corporate board, and Huaidan

¹ See <https://www.facebook.com/RighttoRiseUSA/>.

² See <http://www.apicincus.com/>.

1 Chen is a board member.³ Wilson Chen, a United States citizen, is the Executive Director of
2 APIC and also sits on its board.⁴ Wilson Chen oversees APIC's United States operations.

3 The Complaint's allegation stems from two contributions that APIC made to Right to
4 Rise USA: \$1,000,000 on March 26, 2015, and \$300,000 on June 29, 2015.⁵ The Complaint
5 cites to an article from the online publication *The Intercept*, quoting statements made by Wilson
6 Chen and Tang regarding the contributions. The relevant portion of that article states:

7 According to Chen, 'I proposed to make a donation to the Republican
8 Party and then let the board of directors approve it before sending the
9 donation.' APIC's board includes Chen himself and Neil Bush, both
10 U.S. citizens, but also Chinese citizens Tang and Huaidan Chen. For
11 Tang's part, when asked why APIC made the donation to Right to Rise
12 USA, he responded: 'Wilson said to donate, so I did, I don't really
13 mind.'⁶

14 Right to Rise USA asserts that the Commission did not have the authority to name it as a
15 respondent when it was not originally identified as one in the Complaint and that, in any event,
16 no allegations have been made against it that constitute a violation of the Act.⁷

17 The available information in the record before the Commission established that Neil
18 Bush, the brother of Jeb Bush and a member of APIC's board of directors, first contacted Wilson
19 Chen by telephone in early 2015 to ask whether APIC would contribute to Right to Rise USA.
20 Neil Bush states that Wilson Chen responded that he had some interest. During the weekend of

³ See <http://www.apicincus.com/>.

⁴ According to the Complaint, the board also includes Neil Bush, a United States citizen, and Jinshan Mao, the board's Vice President, whose nationality is not stated in the record. Compl. at 4.

⁵ Compl. at 4, see also Right to Rise USA 2015 Amended Mid-Year Report at 837, 1,400 (May 20, 2016). Right to Rise USA refunded \$152,230 to APIC on May 2, 2016. See Right to Rise USA 2016 June Monthly Report at 682 (June 20, 2016).

⁶ *Id.*

⁷ Right to Rise USA Response at 1-2 (Aug. 30, 2016).

1 February 6, 2015, Neil Bush and Tang both attended the board of directors meeting for
2 SingHaiyi, a company that Tang and Huiadan Chen also own a majority interest in.⁸ Sometime
3 during that weekend Neil Bush and Gordon Tang discussed the possibility of APIC contributing
4 to Right to Rise USA during a private meeting between the two men, and Neil Bush told Tang
5 that he was going to solicit Wilson Chen for a contribution. Tang told Neil Bush that APIC
6 might be interested in contributing if it could do so legally.

7 On February 21, 2015, Neil Bush sent an email to Huaidan Chen (who is also known as
8 Serena Tang) and Wilson Chen,⁹ which states:

9 Serena and Winston,

10 When I was with Gordon [Tang] he expressed interest in donating
11 legally through APIC to my brother Jeb's political action
12 committee (PAC). I've asked the council [sic] for the PAC to send
13 info for qualifications. Please check to see if APIC qualifies as a
14 prospective donor. If Gordon wants to make a donation you ought
15 to pass this by your legal counsel as well to be sure everything is
16 done properly.

17
18 Thanks for your interest in helping my brother and thanks for
19 wanting to do it according to the strict rules and regulations in the
20 USA regarding these matters.

21
22 The email included a memorandum that outlined the contribution rules for domestic subsidiaries
23 of foreign corporations, and that memorandum explained that foreign nationals cannot participate
24 in a domestic subsidiary's decision to make a political contribution.

⁸ While SingHaiyi does business with APIC, the two companies are separate entities. Neil Bush also serves as the Chairman of SingHaiyi's board of directors.

⁹ Neil Bush's initial email was actually sent to Huaidan Chen and Winston Chen; Winston Chen is a Vice President at APIC and United States citizen. The email was intended for Wilson Chen and Neil Bush sent the email to Winston Chen in error. When Huaidan Chen responded to Neil Bush's email, she added Wilson Chen as a recipient and removed Winston Chen.

1 Huiadan Chen, responded to this message on the same day with an email to Wilson Chen
2 that said "[h]i Wilson, Gordon wants you to follow up this matter. Pls check with Ashlee and
3 contact him by phone. Thanks, Serena." Neil Bush was copied on this email. Gordon Tang
4 explained during his interview that, after thinking on the issue, he had instructed Huiadan Chen
5 to send the email that instructed Wilson Chen to follow up on the matter. Wilson Chen
6 responded with an email that stated "Will do. Thank you! Wilson." Neil Bush also was copied on
7 this email.

8 Wilson Chen later emailed Neil Bush and Charles Spies ("Spies"), Right to Rise USA's
9 legal counsel, and advised that he had read the aforementioned memorandum, consulted a
10 "legal/political advisor," and concluded that APIC was qualified to contribute as a United States
11 company. It appears that Spies later inquired as to Wilson Chen's nationality, and Wilson Chen
12 stated that he was a United States citizen.

13 **B. Legal Analysis**

14 The Act prohibits persons from knowingly soliciting, accepting, or receiving a
15 contribution or donation from a foreign national.¹⁰ A person knowingly accepts a prohibited
16 foreign national contribution or donation if that person has actual knowledge that funds
17 originated from a foreign national, is aware of facts that would lead a reasonable person to
18 conclude that there is a substantial probability that the funds originated from a foreign national,

¹⁰ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry.

1 or is aware of facts that would lead a reasonable person to inquire whether the funds originated
2 from a foreign national but failed to conduct a reasonable inquiry.¹¹

3 The record shows that Neil Bush, acting as an agent of Right to Rise USA,¹² had a
4 conversation with Tang, a foreign national, about the possibility of APIC contributing to Rise to
5 Rise USA. After this conversation, Neil Bush sent an email to Huaidan Chen and an address he
6 thought was Wilson Chen's stating, "[w]hen I was with Gordon he expressed interest in
7 donating." Neil Bush advised Wilson Chen in the same email that, "[i]f *Gordon wants to make a*
8 *donation* you ought to pass this by your legal counsel as well to be sure everything is done
9 properly." Huaidan Chen forwarded Neil Bush's email to Wilson Chen instructing him that
10 "Gordon wants you to follow up this matter." Wilson Chen responded with an email in which he
11 agreed to follow up, copying Neil Bush, Neil Bush thus received a copy of both the Huaidan
12 Chen email conveying Tang's instruction, and Wilson Chen's email stating that he would follow
13 up on that instruction.

14 The totality of these interactions show that Neil Bush knew that Tang and Huaidan Chen
15 were foreign nationals and had participated in APIC's decision to contribute to Right to Rise
16 USA. Neil Bush Neil Bush had overlapping business relationships with Tang from which the
17 Commission can reasonably infer that Bush knew Tang was a foreign national, but nonetheless
18 discussed the possibility of an APIC contribution during an in-person meeting with Tang in

¹¹ 11 C.F.R. § 110.20(a)(4).

¹² An agent is typically defined in this context as any person who has actual authority, either express or implied, to solicit, direct, or receive any contribution. See 11 C.F.R. § 300.2(b). Charlie Spies, legal counsel and treasurer for Right to Rise USA, provided Neil Bush with the aforementioned memorandum outlining the contributions rules for a domestic subsidiary of a foreign corporation; Spies also told Neil Bush to let him know what additional information would be helpful. In light of these facts, it appears that Neil Bush was acting as an agent of Right to Rise USA when soliciting the contributions.

1 Singapore. Neil Bush had similar overlapping business relationships with Huaidan Chen, from
2 which the Commission can reasonably infer that Bush knew she was a foreign national, yet he
3 continued, via email, to proactively engage foreign national participation in APIC's contribution.
4 Neil Bush sent Huaidan Chen a legal memorandum stating that, even for a "Super PAC," a
5 "domestic subsidiary corporation **must still comply with the restrictions on foreign national**
6 **funds and participation**"¹³ while simultaneously referencing the prior conversation with Tang
7 and asking Huaidan Chen (as well as the person he believed to be Wilson Chen) to seek Tang's
8 continued participation in the decisions concerning APIC's contribution. Thus, when Right to
9 Rise USA accepted APIC's contributions, it knew it was accepting and receiving contributions
10 that had been directed to it by a foreign national.

11 Although Neil Bush indicated that Wilson Chen should consult with counsel and sent
12 guidelines for making legal contributions, and Gordon Tang asserts that he was only interested in
13 APIC contributing if it could be done legally, this does not negate the knowledge that Right to
14 Rise USA had about Gordon Tang's and Huaidan Chen's participation in the making of APIC's
15 contributions. Nor is it credible that Wilson Chen, as a subordinate to Gordon Tang, made the
16 decision that APIC contribute independent of Gordon Tang's instruction to follow up on Neil
17 Bush's solicitation. Even though Wilson Chen informed Right to Rise USA's counsel that he
18 had read the memo setting forth the legal guidelines, consulted a legal advisor, and concluded
19 that APIC could make a contribution to APIC, that conclusion was erroneous given the known
20 involvement of Gordon Tang and Huaidan Chen.

¹³ (emphasis in original).

1 Right to Rise USA's counsel also appears to have sought nationality information from
2 Wilson Chen, indicating that Right to Rise USA was aware of facts that would lead a reasonable
3 person to inquire whether the funds solicited, accepted, or received from APIC were from a
4 foreign national. However, by asking about the nationality of only one individual, Wilson Chen,
5 Right to Rise USA "failed to conduct a reasonable inquiry" in light of the committee's
6 knowledge that Tang and Huaidan Chen were connected to APIC's decision to make political
7 contributions, as well as the committee's awareness — as evinced by the legal memorandum that
8 Neil Bush provided to Huaidan Chen and Wilson Chen — that the relevant legal issue was
9 whether any foreign national participated in the political-contribution decision-making process of
10 the domestic subsidiary of a foreign parent corporation.¹⁴

11 Accordingly, the Commission finds reason to believe that Right to Rise USA violated 52
12 U.S.C. § 30121(a)(2).
13

¹⁴ 11 C.F.R. § 110.20(a)(4)(iii).